IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4516 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

S L RAVAL

Appearance:

1. Special Civil Application No. 4516 of 2001

GOVERNMENT PLEADER for Petitioners No. 1-2

MR SHAKTISINH GOHIL for Respondent No. 1

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 02/11/2001

ORAL JUDGEMENT

1. Rule. Service of Rule is waived by ld. counsel Mr. Upadhyay appearing for Mr. Shaktisinh Goli, ld. counsel for the respondent. With the consent of the parties, the matter is taken up for final hearing today.

2. The facts in nutshell are that respondent was serving as Senior Clerk with Sir T.Hospital, Bhavnagar as a Cashier. He was chargesheeted for the grave misconduct and was chargesheeted for the breach of Rule 3(1)(1)(2) of Gujarat State Services & Disciplinary Rules and at the end of departmental inquiry, charges were held proved against respondent and, therefore, respondent came to be removed from service vide order dated 25.8.1998 passed by the Commissioner, Health & Medical Education, Gujarat State, Gandhinagar. The aforesaid order of removal was challenged by the respondent before the Gujarat Civil Services Tribunal, Gandhinagar and the Tribunal vide judgment dated 23.10.2000, quashed and set aside the order of removal and altered quantum of punishemnt and respondent was ordered to be reinstated in service. Tribunal, however, held that the alleged misconduct was result of some negligence and, therefore, adequate punishment would be stoppage of three increments without future effect. State of Gujarat has challenged the decision of the Tribunal by filing present petition invoking jurisdiction under Article 226/227 of the Constitution of India.

3. I have gone through the decision of the Gujarat Civil Services Tribunal and Tribunal has appreciated the entire set of facts and on perusal of each pepers of inquiry, has passed reasoned order. I have gone through the entire order passed by the Tribunal. I have also gone through the observations made by the Tribunal in its order at page nos. 19, 20 & 26 (Annex.A). The Tribunal has categorically recorded that closure of right to cross-examine the only govt. witness Shri B.M.Sorathia by respondent who could not remain present on account of death of near relative, has resulted into serious prejudice. It is also observed therein that this is not the case of misappropriation of the government amount. Considering the conduct of the delinquent in! reference to other relevant aspects and fact that defence of respondent delequent was consistent, the order of removal was altered. The discretion exercised by the Tribunal in altering the punishment is absolutely adequate and in accordance with facts available on record and in accordance with law. The petitioner-State of Gujarat has substantially prays to exercise supervisory jurisdiction and to take the impugned order under judicial review. It is not necessary to refer to the settled legal position propounded by different High Courts and the Apex Court that this Court has limited jurisdiction under Article 226/227 of the Constitution when there is no perversity

or illegality apparent on record in the impugned order. Under the circumstances,findings of the Tribunal should not be interfered with. On the contrary, Tribunal has passed reasoned and speaking order, this Court is in agreement with reasons given and findings arrived at by the Tribunal.

4. It is pertinent to note that adequacy of the alternate punishment imposed by the Tribunal is not even impliedly under challenged by the present petitioners and, therefore, I would not like to comment upon the adequacy of the order of punishment passed by the Tribunal while dealing with this petition in exercise of powers under Article 227 of the Constitution.

5. For the reasons aforesaid, there is no merits in the petition and the same is hereby dismissed. Rule is discharged. No costs. Petitioners are directed to reinstate the respondent at the earliest and not latter than 15.12.2001, with all consequential benefits.

2.11.2001 [C.K. BUCH, J]

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